

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0017P
Sales and Use Tax for 2002**

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ISSUE

I. Tax Administration—Penalty

Authority: IC 6-8.1-10-2.1(a)(3); IC 6-8.1-10-2.1(b); 45 IAC 15-11-2(b) and (c).

Taxpayer protests the imposition of a 10% negligence penalty.

STATEMENT OF FACTS

Taxpayer protested the penalties assessed on sales tax liabilities issued in 2002. Taxpayer had taken a credit on monthly returns for the sales tax on bad debts. The Department determined Taxpayer was not entitled to the credit and issued assessments for the tax due. Taxpayer paid the tax liability but protested the penalty.

IV. Tax Administration—Penalty

DISCUSSION

IC 6-8.1-10-2.1(a)(3) states that if a person is examined by the Department and incurs a deficiency that is due to negligence, the person is subject to a penalty. In general, the penalty is 10%. See IC 6-8.1-10-2.1(b). 45 IAC 15-11-2(b), states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence.

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Under 45 IAC 15-11-2(b), Taxpayer incurred a deficiency which the Department determined was due to negligence subject to a penalty under IC 6-8.1-10-2.1(a). However, Taxpayer supplied satisfactory evidence in its protest letter to establish reasonable cause to rebut the assessment of penalties.

FINDING

For the reasons stated above, the Department sustains Taxpayer's protest; no penalties are due.

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